



W.P(MD)No.27339 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.11.2023

CORAM :

THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MR.JUSTICE **R.SAKTHIVEL**

W.P(MD)No.27339 of 2023

Saraswathi

... Petitioner

vs.

1.The State of Tamil Nadu,
Represented by its Additional Chief Secretary,
Home Department (Prisons),
Secretariat, Chennai.

2.The Deputy Inspector General of Prison,
Madurai Zone,
Madurai Central Prison,
Madurai.

3.The Superintendent of Prison,
Central Prison, Palayamkottai,
Tirunelveli – 627 002.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, directing the respondents to grant emergency leave for 15 days without escort to the life convict prisoner namely, Ashok @ Ashok Kutty, S/o.Kottalsamy aged 38 years, Life Convict No.2567, detained at Central Prison, Palayamkottai.



W.P(MD)No.27339 of 2023

For Petitioner : Mr.R.Narayanan

For Respondents : Mr.A.Thiruvadikumar
Additional Public Prosecutor

ORDER

[Order of the Court was made by **M.SUNDAR, J.**]

Captioned 'Writ Petition' ['WP' for the sake of brevity] has been filed in this Court on 15.11.2023.

2. Short facts are that Writ Petitioner's brother one Ashok @ Ashok Kutty, son of Kottaisamy is now a prison inmate serving life sentence in Palayamkottai Central Prison [Life Convict No.2567]; that the petitioner is very unwell, down with respiratory ailment and is hospitalised; that the prison inmate has to attend to the Writ Petitioner and make necessary arrangements for continuing medical treatment in the hospital; that a representation was sent on 02.11.2023 by the Writ Petitioner seeking 40 days ordinary leave or 15 days emergency leave without escort on this ground; that the medical condition of the Writ Petitioner had taken a downturn necessitating the filing of the captioned Writ Petition urgently and move the same by way of emergent motion, is learned counsel's say.



W.P(MD)No.27339 of 2023

WEB COPY

3. Issue notice.

4. Mr.A.Thiurvadi Kumar, learned Additional Public Prosecutor accepts notice for all three respondents.

5. Learned Additional Public Prosecutor submits that there is no disputation that the prison inmate has gone on leave multiple times on earlier occasions including the leave granted vide judicial orders made by this Court.

6. Be that as it may, learned Additional Public Prosecutor points out that on an earlier occasion, prison inmate availed 3 days emergency leave on 19.05.2016, the prison inmate should have returned and surrendered on 23.05.2016 but he did not do so and he was ultimately secured only on 08.09.2018.

7. Responding to the above, learned counsel for petitioner pointed out that an FIR was registered with regard to the aforesaid alleged non-surrender. The same was tried vide C.C.No.245 of 2018 on the file of Additional District and Sessions Judge's Court, Sivagiri and the prison



W.P(MD)No.27339 of 2023

inmate was acquitted by learned trial Judge in and by an order dated 06.03.2020. To be noted, this order of acquittal has been placed before us. It is also pointed out that after such acquittal, 6 days ordinary leave was granted to the prison inmate by this Court in and by an order dated 30.11.2022 made in W.P.(MD)No.25706 of 2022.

8. Adverting to the aforementioned order of another coordinate Hon'ble Division Bench, learned Additional Public Prosecutor points out that it was brought to the notice of said Hon'ble coordinate Division Bench that there is a cooling period of five years vide a circular of Director General of Prisons with regard to elapse and returning after elapsing of leave period. This submission is recorded. Be that as it may, the offence which the prison inmate was tried in this regard have ended in acquittal as alluded to supra. To be noted, post this circular, there was an amendment to Tamil Nadu Suspension of Sentence Rules, 1983, which kicked in on 25.04.2022. This amendment *inter alia* brought in Clause (i) to Rule 21 which talks about non-eligibility for ordinary leave qua prison inmate who may not report back to the prison after the completion of the leave period. The amendment is prospective and the language in which Clause (i) is couched talks about 'may not report'



W.P(MD)No.27339 of 2023

which means it talks about the possibility which may happen in the days to come. To be noted, this aspect has been considered by this Court in T.Pechiyammal's case [T.Pechiyammal Vs. The Secretary of Government of Tamil Nadu in W.P.No.23341 of 2023]. Leave has been granted to the prison inmate by this Court on 30.11.2022 after the amendment kicked in. This Court has also repeatedly held that said Rules being a piece of subordinate legislation made by Executive arm cannot denude or constrict the constitutional powers of this Court. To be noted, this principle has been propounded by this Court in Selvam's case [Selvam Vs. The Deputy Inspector General of Prison in W.P.No.27137 of 2023].

9. There is no serious disputation about the ground on which the leave has been sought, more importantly, the eligibility of the prison inmate is not doubted or subjected to contestation. Therefore, in these facts and circumstances, we deem it appropriate to grant leave though the prayer is for a mandamus. To be noted, this course is adopted considering the facts and circumstances of the case on hand and therefore, the same will not serve as a precedent in all other cases. In other words, granting leave in a mandamus prayer in the writ petition has to be decided on a case to case basis.



W.P(MD)No.27339 of 2023

WEB COPY 10. The following order is made:

i) Writ Petitioner's brother prison inmate Ashok @ Ashok Kutty, [Convict No.2567] now life convict in Central Prison, Palayamkottai is granted 15 days ordinary leave from 16.11.2023 [10.30 a.m.] to 30.11.2023;

ii) prison inmate shall surrender in the office of the third respondent on 01.12.2023 by dusk ie., by 5.30 p.m.

iii) prison inmate shall sign before the jurisdictional Magistrate [we are informed that Jurisdictional Magistrate is Additional District Munsif cum Judicial Magistrate, Sivagiri] on every Monday and Friday. Friday 01.12.2023 will stand excluded qua the aforementioned condition as he would be surrendered in the office of the third respondent on the aforementioned date.



W.P(MD)No.27339 of 2023

11. Captioned main Writ Petition is disposed of with the aforesaid

directions. There shall be no order as to costs.

(M.S., J.) (R.S.V., J.)
15.11.2023

Index : Yes / No

Neutral Citation : Yes / No

vsm

Note: (i) Upload forthwith

(ii) All concerned to act on this order being uploaded in official website of this Court without insisting on certified hard copies. To be noted, this order when uploaded in official website of this Court will be watermarked and will also have a QR code.

To

1. The Additional Chief Secretary,
State of Tamil Nadu,
Home Department (Prisons),
Secretariat, Chennai.
2. The Deputy Inspector General of Prison,
Madurai Zone,
Madurai Central Prison,
Madurai.
3. The Superintendent of Prison,
Central Prison, Palayamkottai,
Tirunelveli – 627 002.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



W.P(MD)No.27339 of 2023

M.SUNDAR, J.
and
R.SAKTHIVEL, J.

vsm

ORDER MADE IN
W.P(MD)No.27339 of 2023

DATED : 15.11.2023